84-1507

Office - Supreme Court, U.S.
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No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1984

ROBERT MILTON CARDER, JR.,
Petitioner,

VS.

JOHN VAN DE KAMP, ATTORNEY GENERAL,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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41pp

QUESTIONS PRESENTED FOR REVIEW

Whether the Municipal Court of Marin County, California, committed "plain error" under F.R.C.P. 52(b) in sentencing petitioner on revocation of probation.

Whether the U. S. District Court for the Northern District of California, and the United States Court of Appeal for the Ninth District in denying petitioner's petition for a certificate of probable cause to appeal, complied with the requirements of F.R.A.P. Section 22(b) that the court state the grounds for refusal to issue the certificate of probable cause.

Whether petitioner's petition to the U. S. Court of Appeal for the Ninth Circuit for a certificate of probable cause for appeal presented one or more "not plainly frivolous" issues entitling petitioner to have his appeal reviewed and determined on the merits by the Court of Appeal.

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JOHN VAN DE KAMP, ATTORNEY GENERAL,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ROBERT MILTON CARDER, JR., petitions for a writ of certiorari to review the decision of the United States Court of Appeal for the Ninth Circuit in this case.

OPINIONS BELOW

None of the opinions below are reported. The order of the Court of Appeal is set forth in Appendix B (Page A-5) to this petition. The order of the United States District Court for the District of Northern California is set forth in Appendix B (Page A-6) to this petition. The Judgment and order denying petition for writ of habeas corpus, by the District Court is set forth in Appendix B (Pages A-7—A-9) to the petition. The decision of the California Supreme Court is set forth in Appendix B (Page A-10) to the petition. The order denying application for certification

to appeal to the California District Court of Appeal is set forth in Appendix B (Page A-11) to this petition. The order of the Appellate Department of the Superior Court of Marin County, California, confirming judgment of the Municipal Court of Marin County, California is set forth in Appendix B (Page A-12) to this petition. The decision of the Municipal Court of Marin County, California is set forth in Appendix B (Pages A-13—A-25) to this petition.

JURISDICTION

The decision of the Court of Appeal (Appendix B, Page A-5) was entered on January 22, 1985. The jurisdiction of this court is invoked under 28 U.S.C. Section 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are set forth in Appendix A (beginning at Page A-1) to this petition. They are:

1. The Eighth Amendment to the United States Constitution.
2. 28 U.S.C. Section 1254.
3. 28 U.S.C. Section 2253.
4. F.R.A.P. Section 22(b).
5. F.R.C.P. Section 52(b).
6. California Vehicle Code Section 23152.
7. California Vehicle Code Section 23206.

STATEMENT

On June 16, 1982, petitioner was charged in the Municipal Court of the State of California for the County of Marin in criminal proceedings, Action No. 54947, with violation of Section 23152(a) and (b) of the Vehicle Code (driving

while under the influence of an alcoholic beverage). At the same time, petitioner was charged with violation of probation for a prior violation of the Vehicle Code Section regarding driving while under the influence of an alcoholic beverage. A petition to revoke his probation was filed in the Municipal Court, Marin County, California.

Petitioner entered a plea of not guilty on or about June 16, 1982 and trial was set to commence on February 23, 1983. At the time of petitioner's trial, the judge indicated that he intended to proceed with the petition to revoke probation before conducting the trial of the case in chief. Hearing was then held on the petition to revoke probation and Judge Thomas of the Marin Municipal Court revoked petitioner's probation sentencing him to serve one hundred twenty days (120) in the Marin County jail, restricted the petitioner from any use of an alcoholic beverage, consumption or transportation of such beverages for a period of one year, prohibited petitioner from driving a vehicle on a highway for a period of one year and imposed an additional fine of $1,000.

Immediately following sentencing, the Marin County Deputy District Attorney moved the court to dismiss the original case in chief because of problems with the evidence. Accordingly, no trial was held on the charge of driving under the influence of an alcoholic beverage but the petition to revoke probation resulting from a May 14, 1982 sentence was granted. The sentence for the May 14, 1982 violation of the Vehicle Code directed the appellant to pay a fine, attend drunk driving school, and be incarcerated in the Marin County jail for fifteen days (15). Petitioner served the full fifteen day sentence, paid the fine and attended the drunk driving school.

Upon receiving the sentence for violation of probation, petitioner's attorney appealed to the Appellate Department

of the Superior Court of Marin County, California, from the order imposing sentence on revocation of probation. The Appellate Department of the Superior Court confirmed the judgment of the Municipal Court. (Appendix B, Page A-12).

Thereafter, petitioner's attorney filed an application for certification to appeal to the District Court of Appeal for the State of California. The District Court of Appeal denied the application for certification to appeal. (Appendix B, Page A-11).

Thereafter, petitioner's attorney filed a writ of habeas corpus with the California Supreme Court. The Supreme Court of California denied the petition for a writ of habeas corpus although the Chief Justice of the California Supreme Court did agree that it should be granted. (Appendix B, Page A-10).

Thereafter, petitioner's attorney filed a petition for a writ of habeas corpus in the U. S. District Court for the Northern District of California. The U. S. District Court for the Northern District of California denied the petition for a writ of habeas corpus. (Appendix B, Pages A-8—A-9).

Petitioner then sought a certificate of probable cause for appeal of the decision of the U.S. District Court denying petition for writ of habeas corpus. The U.S. District Court for the Northern District of California refused to issue the certificate of probable cause for appeal (Appendix B, Page A-6).

Finally, petitioner then filed a petition for a certificate of probable cause for appeal with the U.S. Court of Appeal for the Ninth Circuit. The U.S. Court of Appeal for the Ninth Circuit refused to issue the certificate of probable cause for appeal. (Appendix B, Page A-5).

In his petition for a writ of habeas corpus, petitioner contended that it is a fairly consistent policy of the Munici-

pal Court of the State of California for the County of Marin, in sentencing offenders of the drunk driving laws for a second offense, that the defendant be given fifteen days of jail time. However, in this instance, petitioner had already served fifteen days of jail time and then upon revocation of his probation for having been again charged with driving while under the influence (which charge was dropped) he was sentenced to one hundred twenty additional days in jail. Petitioner contends that this is in effect punishing him for the arrest and finding him guilty of a charge with was never tested in a court of law. Accordingly, the judge was clearly imposing a sentence in excess of what is normally imposed for a second offense and what had already been served. This constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

Also, at the time petitioner was charged with the offense for which his probation was revoked, a new section of the vehicle code had been enacted (Vehicle Code Section 23206) which section provided in pertinent part:

> "(a) If any person is convicted of a violation of Section 232152 or 23153 *the court shall not stay or suspend pronouncement of sentence* and shall pronounce sentence in conjunction with the conviction in a reasonable time, including time for receipt of any pre-sentence investigative report or pursuant to Section 23205." (Emphasis Added)

Petitioner was sentenced on the underlying charge but imposition of that sentenced was suspended and petitioner was placed on probation. Petitioner respectfully submits that the judge was without authority to suspend imposition of sentence at the time sentence was pronounced. Petitioner believes that the language of that statute is quite clear respecting the court's power in sentencing an individual convicted of a violation of Section 23152 or 23153, however,

any doubt as to the intent of the legislature enacting the statute is put to rest by a review of the Legislative Advance Service for 1981, Number 6, at page 661 where the following statement concerning the new Section 23206 of the Vehicle Code can be found:

> "The bill would require, on conviction, the court sentence the offender and not stay or suspend imposition of sentence."

Accordingly, it is petitioner's contention that upon revocation of his probation the judge was without authority when he attempted to impose a new sentence of one hundred twenty days and that the court simply ignored the previous sentencing error on its own discretion. Had the court, instead of suspending imposition of sentence, imposed a sentence and then suspended its execution at the time petitioner was put on probation in May of 1982, then clearly the court would have had the power to impose the sentence upon revocation of probation. That is not the case here, however, as the court suspended imposition of the sentence not execution of it.

Petitioner sought review of the lower court's decision in his writ of habeas corpus which writ was denied by the California Supreme Court and the United States District Court for the Northern District of California. Petitioner believes that the courts are refusing to address this issue on its merits and now ask the Supreme Court to order the United States Court of Appeal to hear petitioner's argument.

REASONS FOR GRANTING THE WRIT

This case presents important questions concerning the conduct of a judge at a defendant's sentencing, where the law mandates that imposition of sentence not be suspended at the time of sentencing and that the defendant be sentenced within a reasonable time, when the judge merely

ignores the law or fails to follow it, and subsequently attempts to impose sentence as though no mandate existed. Petitioner respectfully submits that such actions on the part of the judge constitutes plain error under F.R.C.P. 52(b). Equally important is the issue of whether petitioner having received a sentence of one hundred twenty days in jail when others similarly situated almost uniformly receive a sentence of only fifteen days in jail, constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

The petitioner was charged with violation of California Vehicle Code Section 23152 and, at the time he plead guilty to the offense, California Vehicle Code Section 23206 mandated that the judge not stay or suspend pronouncement of sentence but pronounce sentence in conjunction with the conviction in a reasonable time. In direct contravention to this statutory provision, the judge suspended imposition of sentence against defendant and then when he was arrested and charged with a subsequent violation of the same code section (which charges were dropped) the judge revoked petitioner's probation and then sentenced the petitioner well beyond the time within which California Vehicle Code Section 23206 mandated that sentence be pronounced.

The court further, in imposing sentence upon revocation of petitioner's probation, sentenced him to one hundred twenty days in jail which is the standard penalty for third offenders of the Vehicle Code Section regarding driving while under the influence of an alcoholic beverage when he had only committed a second offense. The almost uniform sentence for a second offender is fifteen days in jail. Petitioner believes this is cruel and unusual punishment under the Eighth Amendment to the United States Constitution. The Eighth Amendment is clearly applicable to States based on the due process clause of the Fourteenth Amendment. *Robinson v. California* (1962) 370 U. S. 660, 8 Law-

yers Edition 2d 758, 82 Supreme Court 1417, reh. den. 371 U.S. 905, 9 Lawyers Edition 2d 166, 83 Supreme Court 202. *Roberts v. Louisiana* (1976) 482 U.S. 325, 49 Lawyers Edition 2d 974, 96 Supreme Court 3001, reh. den. 429 U. S. 890, 50 Lawyers Edition 2d 173, 97 Supreme Court 248 and on remand (LA) 340 SO 2d 263.

In determining whether a statute violates the Eighth Amendment prohibition against cruel and unusual punishment, the facts usually considered by the court include the nature of the offense involved, the legislative purpose behind the punishment, the punishment that the defendant would have received in other jurisdictions, and the punishment meted out for other offenses in the same jurisdiction. *Hart v. Coiner* (1973 CA 4 WVA), 483 F 2d 136, 27 ALR Fed 93 Cert. den 415 U.S. 938, 39 Lawyers Edition 2d 495, 94 Supreme Court 1454, reh. den. 416 U.S. 916, 40 Lawyers Edition 2d 118, 94 Supreme Court 1624 and Cert. den. 415 U. S. 983, 39 Lawyers Edition 2d 881, 94 Supreme Court 1577. If the court takes into consideration the punishment meted out to other defendants for the same offense as petitioner was sentenced it will be seen that petitioner received a one hundred twenty day jail sentence where others similarly situated received a fifteen day jail sentence. This punishment is considerably in excess of that routinely meted out to the offenses in the same jurisdiction. As such it is unusual punishment.

The words of the Eighth Amendment prohibition of cruel and unusual punishment are not precise and the exact scope of the phrase "cruel and unusual" has not been detailed by the Supreme Court, and whether the word "unusual" has any qualitative meaning different from "cruel" is not clear. If the word "unusual" is to have any meaning however, apart from the word "cruel" such meaning should be the ordinary one, signifying something different from that which is generally done. *Trop v. Dulles*

(1958) 356 U. S. 86, 2 Lawyers Edition 2d 630, 78 Supreme Court 590 (plurality decision). The sentence of petitioner was something different from that which is generally done in that normally he would receive a fifteen day sentence not one hundred twenty days for a second offense of driving while intoxicated.

Petitioner further contends that both the United States District Court and the United States Court of Appeal for the Ninth Circuit, in denying petitioner's certificate of probable cause to appeal the District Court's denial of his petition for a writ of habeas corpus, did not state their reasons for denying the certificate as required by Federal Rules of Appellate Procedure 22(b). Such statement is mandatory. *Herrera v. Payne* (1982 CA 10) 673 Fed 2d 307, 34 F.R.SERV. 2d 799. The United States District Court in its denial of the application for certificate of probable cause merely stated: "After reviewing the record this court finds that any appeal would be without merit, and therefore petitioner's application is denied." Appendix B, (Page A-6). Petitioner believes that this does not meet the requirements of Federal Rule of Appellate Procedure Section 22(b) that the reasons for denial be stated. In *Herrera v. Payne* the court's decision reads as follows:

> "Petitioner having filed notice of appeal from the order dismissing the petition for writ of habeas corpus, and the court finding no substantial issue of law for review set forth in the memorandum opinion filed herein,
>
> IT IS ORDERED that no certificate of probable cause for appeal be issued." *Herrera v. Payne*, Supra. at 308.

The court in that case felt the order did not meet the requirements of Federal Rule of Appellate Procedure 22(b) noting that the proper exercise of the court's discretion in deciding whether to issue the certificate of prob-

able cause or not cannot adequately be reviewed where no reason for the determination was given. *Herrera v. Payne*, Supra.

Similarly, the United States Court of Appeal, upon application to it to issue the certificate of probable cause, in denying that application, merely stated: "Appellant's application for a certificate of probable cause is denied." (Appendix B, Page A-5). Neither court adequately stated their reasons for denying the certificate of probable cause for appeal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

VERNON L. BRADLEY
Attorney for Petitioner

(Appendices follow)

Appendix A

AMENDMENT 8

Bail-Punishment.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

(June 25, 1948, c. 646, § 1, 62 Stat. 938.)

§ 2253. Appeal

In a habeas corpus proceeding before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause.

(June 25, 1948, c. 646, § 1, 62 Stat. 967; May 24, 1949, c. 139, § 113, 63 Stat. 105; Oct. 31, 1951, c. 655, § 52, 65 Stat. 727.)

VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

Rule 22. Habeas Corpus Proceedings

(a) Application for the Original Writ. An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application will ordinarily be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge is not favored; the proper remedy is by appeal to the court of appeals from the order of the district court denying the writ.

(b) Necessity of Certificate of Probable Cause for Appeal. In a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court, an appeal by the applicant for the writ may not proceed unless a district or a circuit judge issues a certificate of probable cause. If an appeal is taken by the applicant, the district judge who rendered the judgment shall either issue a cer-

tificate of probable cause or state the reasons why such a certificate shall not issue. The certificate or the statement shall be forwarded to the court of appeals with the notice of appeal and the file of the proceedings in the district court. If the district judge has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge. If such a request is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a state or its representative, a certificate of probable cause is not required.

Rule 52. Harmless Error and Plain Error

(a) Harmless error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) Plain error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

(Dec. 26, 1944, eff. Mar. 21, 1946.)

§ 23152. Driving under the influence

(a) It is unlawful for any person who is under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug, to drive a vehicle.

(b) It is unlawful for any person who has 0.10 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

For purposes of this subdivision, percent, by weight, of alcohol shall be based upon grams of alcohol per 100 milliliters of blood.

In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.10 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving.

(c) It is unlawful for any person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a methadone maintenance treatment program approved pursuant to Article 3 (commencing with Section 4350) of Chapter 1 of Part 1 of Division 4 of the Welfare and Institutions Code.

VEHICLE CODE § 23206. Pronouncement of sentence; Term of probation

(a) If any person is convicted of a violation of Section 23152 or 23153, the court shall not stay or suspend pronouncement of sentencing and shall pronounce sentence in conjunction with the conviction in a reasonable time, including time for receipt of any presentence investigation report ordered pursuant to Section 23205.

(b) If any person is convicted of a violation of Section 23152 or 23153 and is granted probation, the terms and conditions of probation shall include, but not be limited to, a time of probation which shall be three years.

(c) The court shall not absolve a person who is convicted of a violation of Section 23152 or 23153 from the obligation of spending the minimum time in confinement, if any, or of paying the minimum fine provided in this article.

Added Stats 1981 ch 940 § 32.
Review of 1981 Legislation. 13 Pacific LJ 787.

Appendix B

United States Court of Appeals
For The Ninth Circuit

No. 84-2745
DC# CV 84-3478-SC
Northern California

Robert Milton Carder, Jr.,
Petitioner-Appellant,

vs.

John Van de Kamp, Attorney General,
State of California,
Respondent-Appellee.

[Filed Jan. 22, 1985]

Before: SCHROEDER and REINHARDT, Circuit Judges

ORDER

Appellant's application for a certificate of probable cause is denied.

United States District Court
Northern District of California

No. C-84-3478 SC

Robert Milton Carder, Jr.,
Petitioner,

vs.

John Van de Kamp, Attorney General,
State of California,
Respondent.

[Filed Nov. 16, 1984]

ORDER DENYING APPLICATION FOR CERTIFICATE OF PROBABLE CAUSE

The order of this court denying petitioner's application for a writ of habeas corpus was filed on August 24, 1984. The case is presently before the court on petitioner's application for a certificate of probable cause to appeal.

After reviewing the record this court finds that any appeal would be without merit, and therefore petitioner's application is denied.

Dated: November 16, 1984.

/s/ Samuel Conti
United States District Judge

United States District Court
Northern District of California

No. C-84-3478 SC

Robert Milton Carder, Jr.,
Petitioner,

v.

John Van de Kamp, Attorney General,
State of California,
Respondent.

[Filed Aug. 24, 1984]

JUDGMENT

It is hereby ordered, adjudged and decreed that petitioner's petition for the writ of habeas corpus is dismissed in accordance with the order of the court entered herein.

Dated: August 20, 1984.

[s] Samuel Conti
United States District Judge

United States District Court
Northern District of California

No. C-84-3478 SC

Robert Milton Carder, Jr.,
Petitioner,

v.

John Van de Kamp, Attorney General,
State of California,
Respondent.

[Filed Aug. 24, 1984]

ORDER RE PETITION FOR WRIT OF HABEAS CORPUS

Petitioner collaterally challenges his state court sentence through this petition for the writ of habeas corpus. He apparently is not currently confined. Petitioner alleges he has presented his claims to the California Supreme Court, which denied all relief.

FACTS

Petitioner was convicted in state court of driving under the influence of alcohol. It appears that sentence was suspended and he was placed on probation with the restrictions that he refrain from using alcohol, that he not drive on the highway for one year and that he pay a $1,000 fine on a monthly basis. It also appears that this was his second offense. While on probation, petitioner apparently was charged again with driving under the influence of alcohol.

He was not convicted but his probation was revoked. At the time of revocation, the state judge sentenced petitioner to 120 days in jail.

DISCUSSION

Petitioner challenges his 120 day sentence on the ground that it constitutes cruel and unusual punishment under the eighth amendment and that the state judge committed plain error under Federal Rule of Criminal Procedure 52(b). In essence, petitioner, who is represented by counsel, contends that a 120 day sentence is the usual sentence for third offenders and hence is cruel and unusual with respect to second offenders. Upon review of the record, the court concludes that petitioner's petition is frivolous and must be dismissed.

In accordance with the foregoing, it is hereby ordered that petitioner's petition for the writ of habeas corpus is dismissed.

Dated: August 20, 1984.

/s/ Samuel Conti
United States District Judge

Order Denying Writ of Habeas Corpus

Criminal No. 23493

In the Supreme Court of the State of California

In Bank

In re Carder, Jr., Robert, Milton
on Habeas Corpus.

[Filed Feb. 22, 1984]

Petition for writ of habeas corpus Denied.
Bird, C.J., is of the opinion the petition should be granted.

/s/ Bird
Chief Justice

A025671

Division Five

Appellate Department
In the Superior Court of the State of California
In and for the County of Marin

Case No. 8605

People of the State of California
Plaintiffs/Respondents

vs.

Robert Milton Carder, Jr.
Defendant/Appellant

[Filed Dec. 8, 1983]

Order Denying Application for Certification

The application for certification to the Court of Appeal is denied.

Dated: Dec. 8, 1983

/s/ Peter Allen Smith
Presiding Judge
/s/ Richard W. Breiner
Judge
/s/ Beverly B. Savitt
Judge

A025671

Division Five

Appellate Department
In the Superior Court of the State of California
In and for the County of Marin

Case No. 8605

People of the State of California
Plaintiffs/Respondents

vs.

Robert Milton Carder, Jr.
Defendant/Appellant

[Filed Nov. 14, 1983]

Order Affirming Judgment

The appeal from a judgment in the Municipal Court of the State of California, Central Judicial District, County of Marin, having been submitted on November 8, 1983, and good cause appearing therefore;

The judgment is affirmed.

Dated: Nov. 10, 1983

/s/ Peter Allen Smith
Presiding Judge

/s/ Richard W. Breiner
Judge

/s/ Beverly B. Savitt
Judge

Municipal Court of California, County of Marin,
Central Judicial District

Criminal Docket No. C 53316

People of the State of California,

vs.

Robert Milton Carder,
Defendant.

JUDGMENT

Judgment Order Admitting
Defendant to Summary Probation
William H. Stephens, Judge
Judge of the Municipal Court

The above named defendant having heretofore been convicted in this Court of the crime of Misdemeanor, to-wit: Violation of Section 23152(a) of the Vehicle Code on the 14th day of May 1982, and having been admitted to Summary Probation.

It is hereby ordered that:

( ) The defendant be imprisoned in the Marin County Jail for .....days/months; Execution of Sentence is Suspended and the defendant is admitted to Summary Probation for a period of ..... months/years upon the conditions set forth below:

(X) Imposition of Sentence is Suspended and the defendant is admitted to Summary Probation for a period of three years upon the conditions set forth below:

Conditions of Probation

(only those items checked are applicable to this judgment)

(X) *Lead a Law Abiding Life*

(X) *Pay a Total Fine of $1230.00*
($750. + $300. + $75. + $105.)
( ) Forthwith. (X) By 7/31/82 or appear .....
( ) Installments of $..... commencing .....

(X) *Jail*
(X) Serve fifteen days
( ) Forthwith
( ) Weekends commencing ..... at ....m. to ..... at ....m.
(X) Commencing 5/23/82 at 6 p.m.
( ) Credit for time served.
( ) Work Furlough. ( ) Honor Farm.
( ) Not at Honor Farm.
( ) Consecutively to .....
( ) Concurrently with .....

( ) *Perform* ..... hrs/days Volunteer Work by ..... or appear ..... at .....m

(X) *Driving Restriction*
(X) 12 months may drive only to and from work and as required by work, or looking for work;
(X) To and from Court School for Drinking Offenses and/or Post Conviction Drinking Drvr. Program.
( ) Family necessities
( ) Daylight hours only
( ) No pleasure driving
( ) ..... days/months/year, driving privileges suspended and defendant is not to drive for any reason
( ) Not drive until duly licensed by DMV.
( ) License ..... surrendered.

(X) *Alcohol Programs*

( ) Within ..... days, attend and complete Court School for Drinking Offenses.

(X) Participate and complete the Post Conviction Drinking Driver Program.

( ) Attend AA Meetings on a ..... weekly/monthly basis for a period of ..... and submit proof of attendance by .....

( ) *Restitution*

( ) Make restitution to ..... by ..... through the Victims Assistance Office.

( ) As determined by the District Attorney within ..... days/months and submit proof by .....

( ) As may be agreed upon or as civilly adjudicated.

( ) *Other Terms*

( ) Totally abstain from the use of alcohol.

( ) Not use, consume, abuse, possess or transport alcohol.

( ) Submit to a search and seizure of his person, vehicle or residence at any time by any Peace Officer to detect the presence of stolen property or contraband.

( ) Not annoy, harass or threaten .....

( ) Not own or have possession, custody or control of any firearm.

(X) Count II dismissed in the interest of justice.

( )

Done in open Court on 5/14/82.

5/14/82 Order Regarding Custody of Prisoner to Sheriff; copy filed.

Probation Report filed.

Arrest Disposition Report to Sheriff; copy filed.

7/7/82 Abstract of Court Record to Sacramento.

5/18/82 Accounts Receivable Card to Accounting Division.

Community Service Referral forwarded to Volunteer Bureau.

Copy of Order Admitting Defendant to Summary Probation mailed to defendant.

5/14/82 DDP information to defendant.

Upon satisfactory completion of probation you may apply to the court to have your conviction set aside pursuant to Section 1203.4 of the Penal Code.

Municipal Court of California, County of Marin,
Central Judicial District

Criminal Docket No. C 53316

The People of the State of California

vs.

Robert Milton Carder

Defendant.

Compl. Filed 4/28/82 Arrest Agency CHP
Place of Arrest County Date of Arrest 4/20/82
Charges: ( ) Felony (X) Misd. ( ) Infr. to Wit: Vio. Section(s) 23152(a)VC (Driving under the influence) CT I: 23152(b)VC (Driving at .10 or above) CT II PRIOR 23102(a)VC

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Aff. filed/Warr arrest iss. on ..... $.....Bail.
( ) Warr. arrest filed on ..... ( ) Svd. ( ) Unsvd.

$..... Cash posted by: ..... on .....
Rec. No. ..... $..... Surety Bond No. .....
Corp.: ..... Bondsman: ..... on .....
Bail Exonerated on ..... AR No. ..... Bail Forfeited on .....

Date

Judge: ..... DDA: ..... Rptr: ..... Dep. Clk. .....

( ) No Complaint to Issue. ( ) No App. by Def.
( ) Def. With/Without Counsel .....
People State No Complaint to Issue. Reason: .....
( ) Bail Exon. ( ) Def. Rel Forthwith. Order re Custody Del. to Sheriff.

( ) No. App. by Def. ( ) Bail Forf. Bench Warrant to Issue—Bail $.....

( ) Warrant to Issue, ... Bail. ( ) Aff. to DE Filed by D.A.

( ) Arr. Cont. to ..... at ....M., at Request of: ( ) Def. ( ) Counsel ( ) People.

4/30/82

Judge None. DDA: K. Jones. Rptr. None.
Dep. Clk. Cattaneo by Ammann.

( ) No App. by Def. (X) Def. Without Counsel .....

(X) Copy of Complaint Delivered to Defendant.

(X) Statement of Rights Delivered to Defendant.

( ) ..... Appearing for the Defendant. Stipulated Defendant Duly and Properly Arraigned.

( ) Formal Reading of the Complaint Waived.

( ) Defendant States True Name Is As It Appears on the Complaint.

Defendant is informed in open court of the following rights: Counsel of his own choice at all stages of the proceedings; Reasonable time to obtain counsel; To court appointed counsel (except infractions); To reasonable bail; To plead guilty, not guilty or no contest; To remain silent or take the stand in own behalf and present testimony; Trial by court or jury (except infractions); To be tried within 30 days if in custody. or 45 days if not in custody at the time of arraignment; To a preliminary hearing within 10 court days; That if not so tried, to have the case dismissed and the effect of a waiver thereof; To subpoena witnesses free of charge; To be confronted by the witnesses against him/her and to cross-examine them; To appeal from all proceedings; Statutory times for sentencing. Dep. Clerk's initials: (AM)

The defendant indicates he intends to be represented by private counsel. Case continued to 5/14/82 at 1:30 p.m. for counsel and plea.

5/14/82

William H. Stephens, Judge. DDA L. Witong. Rptr. Robin McConnell. Dep. Clk. Kelly by Barbier. Defendant appearing without counsel. Defendant requests to plead guilty. Defendant is advised the Court will recommend a jail sentence if he pleads guilty. PASS to execute Guilty Plea Waiver Form. Later: Appearances as heretofore stated. Defendant appearing without counsel. Guilty Plea Waiver Form executed and submitted to the Court. Defendant confirms his understanding of the constitutional rights he is waiving on the Declaration he signed. Defendant arraigned for plea to violation of Section 23152(a) VC and enters plea of Guilty. Prior of 1/5/81 admitted. Factual basis for plea related. Contents of DDL related. Defendant requests pronouncement of judgment today.

See Page Three for Judgment

Amount $ + $ P.A. Fine—Accounts Receivable

Date Pd.	Rec. No.	Amt. Pd.	Bal. Due
8-12-82	M-158589	700.00	530.00

Check bounced Entry reversed

9/14/82 Received replacement of bounced check M158481

MUNICIPAL COURT OF CALIFORNIA,
COUNTY OF MARIN,
CENTRAL JUDICIAL DISTRICT

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Vio. Sec. ..... — CR C53316

2-24-83

WHEREUPON, defendant is sentenced to serve one year in the Marin County Jail; defendant's driving privileges are suspended for a term of one year; and defendant is sentenced to pay a fine of $1,000.00: Execution of Sentence Suspended two years conditional sentence, three years from 5-14-82, on the following terms and conditions:

1. Defendant shall lead a law abiding life.

2. Defendant shall serve 120 days in the Marin County Jail commencing 3-5-83 at 6:00 p.m.

3. Defendant's driver's license is suspended for period of 1 year. Defendant shall not drive until duly licensed by Department of Motor Vehicles.

4. Defendant shall pay a fine in the sum of $1,000.00 plus penalty assessment (1,000 + 400 + 100 + 120) at the rate of $100.00 per month commencing 4-1-83.

• • •

5. Defendant shall not use, abuse, possess or transport any alcoholic beverage during period of Probation.

Defendant undertakes to live up to conditions of Probation. Court indicates defendant could be sentenced to 1 year in the County Jail if he violates conditions of Probation.

Gary W. Thomas, Judge

Motion to Modify Revocation of Probation Pursuant to Penal Code Section 1203.2 with Order Shortening Time and Points and Authorities in Support of a Motion Modifying Revocation of Probation filed. Carder on calendar 3-3-83 at 9:00 a.m. for Hearing on Motion to Modify Revocation of Probation Pursuant to Penal Code Section 1203.2 in Department II.

Gary W. Thomas, Judge. Dep. Clk. Herbert. In Chambers: Defendant shall pay fine in the sum of $1,620.00 with credit for $1,230.00 previously paid.

Gary W. Thomas, Judge. DDA Paula Kamena. Rptr. Judy Payn. Dep. Clk. Stoll. Cause called for hearing defendant's motion to modify revocation of probation. Vernon Bradley, Esq., appearing with defendant. Mr. Bradley indicates that he believes the sentence imposed by Judge Stephens was 15 days jail with no probation, and that he has contacted the court reporter for a transcript but it has not yet been prepared. Mr. Bradley further indicates that the fine should not exceed that allowed by law, noting that the defendant initially was ordered to pay a fine of $1,230.00. Mr. Bradley further comments on the dismissal of the new chages. Mr. Bradley cites points and authorities with regard to the revocation proceedings in this matter. People indicate that they have not read the docket and suggest a continuance. Mr. Bradley states he is requesting a continuance so he can obtain the transcript of the initial sentence and moves for a stay on the jail sentence pending review of the transcript. Court responds that the docket is quite clear with regard to the sentence imposed. With regard to the dismissal of the new charge (C54947), the court refers defense counsel to the contents

of the Prosecutor's Motion and Statement Pursuant to Section 23212 VC on file in the new charge. As to the jail sentence imposed, court advises Mr. Bradley that the defendant is being given credit for the 15 days he served previously. The Court further advises defense counsel that the defendant is given credit for the fines and assessments he has previously paid. Defendant's motion to modify revocation of probation is denied. Defendant is to begin serving the jail sentence on 3-5-83 at 6:00 p.m. as previously ordered (owes 105 days). Defendant is advised the balance owed on the fine is $390.00.

Gary W. Thomas, Judge

2-2-83

Amended Order Regarding Custody of Prisoner issued and delivered to Sheriff; copy filed.

6-6-82

Pet. for Rehearing Filed; Hrng. Set for 6-18-82 at 9:30 p.m.

6-18-82

William H. Stephens, Judge. DDA K. Jones. Rptr. Fitzsimmons. Dep. Clk. Ashley by Johnson. Defendant appearing without counsel and moves for a continuance to obtain counsel. Case is continued to 6-25-82 at 1:30 p.m. for counsel and set hearing on Petition.

6-25-82

William H. Stephens, Judge. DDA Stanfield-Elias. Rptr. Fitzsimmons. Dep.Clk. Jackson by Johnson. V. Bradley appearing for the defandant. Statement by counsel regarding the Petition. Hearing requested. Case is continued to 7-27-82 at 1:30 p.m. for hearing on Petition to Revoke Probation. (trailing C54947)

7-27-82

Robert A. Smallman, Judge. DDA Pougiales. Rptr. Takasch. Dep.Clk. Kelly by Johnson. Matter trailing

C54947 on calendar 10-4-82 at 9:00AM for trial readiness calendar and 10-7-82 at 9:30AM for jury trial. This matter will also be heard then with the understanding both sides will be allowed to present evidence on the Petition to Revoke.

8-31-82

Entry by B. Hanley, Dep Clk. Check in the amount of $600.00 returned unhonored by the bank cancelling a portion (600.00) of Receipt M 158589 dated 8-12-82. Defendant notified replacement must be made by 9-9-82 or appear in Court.

9-14-82

Received $610.00 ($10.00 on Civil Fees) as replacement for check unhonored by the bank deposited under Receipt M158481.

10-4-82

William H. Stephens, Judge. Dep. Clk. Henry. Rptr. Fitzsimmons. DDA. Nelson. Cause called Defendant appearing by Vernon Bradley. Cause continued to 1-17-83 at 9:00 a.m. and 1-20-83 at 9:00 a.m. trailing C54947.

1-17-83

Hon. Ernest C. Zunino, Judge. DDA G. Jones, Rptr. Vindigni. Dep Clk Kelly. Vernon Bradley appearing on behalf of the defendant. Matter continued to 2-14-83 at 9:00 a.m. and to 2-23-83 at 9:00 a.m. in Dept IV trailing C-54947 for hearing on the Petition for Revocation of Probation.

2-14-83

Trial Readiness Calendar: Hon. Ernest C. Zunino, Judge. DDA. G. Jones. Rptr. R. Vindigni. Dep. Clk. Richards. No appearance by or for the defendant. On Court' motion case continued to 2-23-83 at 9:00 a.m. trailing C54947 for hearing on Motion for Revocation of Probation.

2-23-83

Ernest C. Zunino, Judge. Dep. Clk. Henry. Rptr. Vindigni. DDA. Witong. Cause called. Defendant appearing with Vernon Bradley. Defendant's Motions pursuant to 170.5 and 170.6 CCP argued. Vernon Bradley sworn and testified. Defendant's Motion purs. to 170.5 denied and as to 170.6 granted. Cause continued to 2-24-83 at 9:00 a.m. trailing C 54947.

2-24-83

Gary W. Thomas, Judge. DDA K. Jones. Rptr. J. Payne. Dep. Clk. Herbert. Cause called for hearing on Petition for Revocation of Probation. Defendant present without counsel. Clerk states defense counsel is appearing in Superior Court on another matter and he requests matter be passed. Matter Passed. Latter: Cause called. Appearances as heretofore stated. Vernon Bradley, Esq. appearing with defendant. Cause called. Both sides report ready. Defense counsel moves for petition to be heard after jury trial in C54947. Motion Denied. Court states any testimony of defendant in this matter cannot be used against him in jury trial in C54947. Matter Passed. Later: Cause called. Appearances as heretofore stated. Vernon Bradley, Esq. appearing with defendant. Witness called, sworn and testifies on behalf of the People: Thomas G. Parnow, California Highway Patrol. Witness cross examined. Witness excused. Witness called, sworn and testifies on behalf of the People: Gerard F. Geminer, California Highway Patrol. People's Exhibit No. 1 (intoxilyzer test record) marked for identification. Witness cross examined. Witness examined on redirect. Witness excused. On motion of the People, no objection by defense counsel, People's Exhibit No. 1 admitted into evidence. 11:25 a.m. Cause recessed. 11:58 a.m. Cause called. Appearances as heretofore stated. Vernon Bradley, Esq. appearing with defendant. The People state their next witness is testifying in another courtroom and request a

recess. Cause recessed to 1:30 p.m. this date. 1:41 p.m. Cause called. Appearances as heretofore stated. Vernon Bradley, Esq. appearing with defendant. 1:42 p.m. Witness called, sworn and testifies on behalf of the People: Lansing Lee, California Department of Justice. Witness cross examined. Witness examined on re-direct and re-cross. Witness excused. People Rest. 2:40 p.m. Cause recessed. 2:55 p.m. Cause called. Appearances as heretofore stated. Vernon Bradley, Esq. appearing with defendant. Defendant called, sworn and testifies on his own behalf: Robert Milton Carder, Jr., 885 Appleberry, San Rafael. Defendant cross examined. Defendant examined on re-direct. Defendant steps down from the witness stand. Defense Rests. Cause argued. Whereupon, Court fines defendant has not lived up to terms of Probation. Court orders Petition Granted, Probation Revoked. Defense counsel requests time for defendant to get his affairs in order if Court imposes any jail time. Time waived for sentencing. Defendant has no legal cause to show why sentence should not now be pronounced.

SEE PAGE 4 FOR JUDGMENT